

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: August 21, 2007)
(Reissued with redactions: June 25, 2008)

DO NOT PUBLISH

JANE DOE/18,)	
)	
Petitioner,)	
)	
v.)	No. [REDACTED]V
)	Attorneys' Fees; Attorneys' Costs;
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES, ATTORNEYS' COSTS
AND PERSONAL EXPENSES¹

Petitioner, Jane Doe/18 (Ms. Doe/18), seeks an award of attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 for an action that she pursued under the National Vaccine Injury Compensation Program (Program).² In a revised motion for fees and costs, Ms. Doe/18's current attorney of record, Paul S. Dannenberg, Esq. (Mr. Dannenberg), claims \$54,032.07 in attorney's fees and attorney's costs. *See* Revised Motion for Fees and Costs (Amended Fee Petition), filed August 3, 2007, at 1. Ms. Doe/18's former attorney of record, Ronald C. Homer, Esq. (Mr. Homer), claims \$14,050.27 in attorneys' fees and attorneys' costs. *See generally* Petitioner's Formal [sic] Counsel's Application for Fees and Costs (Mr. Homer's Fee

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Petition), filed June 27, 2007. Ms. Doe/18 claims \$3,065.26 in personal expenses as defined by General Order No. 9. *See* Amended Fee Petition at 1. Respondent does not object to the Amended Fee Petition or to Mr. Homer's Fee Petition. *See* Status Report, filed August 16, 2007.

Ms. Doe/18 did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of compensation to cover" Ms. Doe/18's "reasonable attorneys' fees and other costs" as long as "the special master or court determines that" Ms. Doe/18 possessed "a reasonable basis for the claim" and that Ms. Doe/18 filed the petition "in good faith." § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master's "discretion is not without limit." *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent "special circumstances," the special master "should ordinarily" award attorneys' fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully the Amended Fee Petition and Mr. Homer's Fee Petition. The special master determines that the Amended Fee Petition and Mr. Homer's Fee Petition are appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Doe/18's favor for \$71,147.60 in attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9.³ The judgment shall reflect that Mr. Dannenberg may collect \$54,032.07 from Ms. Doe/18. In addition, the judgment shall provide that Mr. Homer may collect \$14,050.27 from Ms. Doe/18. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send a courtesy copy of this decision to:

Ronald C. Homer, Esq.
Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, Massachusetts 02116

The clerk of court shall send Ms. Doe/18's copy of this decision to Ms. Doe/18 by overnight express delivery.

John F. Edwards
Special Master

³ \$54,032.07 for Mr. Dannenberg's fees and costs + \$14,050.27 for Mr. Homer's fees and costs + \$3,065.26 for Ms. Doe/18's personal expenses as defined by General Order No. 9.